

Case 3:08-cv-00795-DRH-CJP Document 36 Filed 10/02/09 Page 1 of 2 Page ID #106

**DONNELL LEWIS, JR.,**

Plaintiff,

V.

**XAVIER BLACKBURN,**

Defendant.

Civil No. **08-795-DRH-CJP**

**ORDER**

## PROUD, Magistrate Judge:

Before the Court is plaintiff's Motion to Compel Discovery and to Impose Sanctions for Failure to Preserve Evidence. (**Doc. 30**). Defendant filed a response at **Doc. 35**.

Plaintiff believes that the events giving rise to his claim were captured on videotape. He asks the Court to either compel defendant to produce the tape, or to sanction him for failing to preserve the tape as evidence for use in this lawsuit.

The motion is vague as to whether plaintiff actually served a request to produce the tape before the filing the motion; there is certainly no copy of such a request or of defendant's response thereto attached to the motion. According to the response to the motion, this is the first occasion that defendant has had to answer the allegation that he has failed to produce the videotape. Further, defendant indicates that his current information is that the tape does not exist.

Local Rule 26.1 requires that a motion to compel include a verbatim statement or a copy of the discovery requests and objections. Without same, the Court cannot decide whether the requests and/or objections are proper. In addition, Fed. R. Civ. P. 37(a)(1) requires a party to make a good faith effort to informally resolve discovery disputes before filing a motion to compel, and to include a certification to that effect in the motion. That was not done here.

At this juncture, it is unclear, at best, as to whether such a tape ever existed, and if so, what happened to it and whether it exists today. The Court notes that neither St. Clair County nor the St. Clair County Sheriff's Department are defendants in this case. Further, plaintiff offers no authority for his belief that Officer Blackburn had a duty to preserve the videotape (if one existed) in anticipation that plaintiff might file a lawsuit.

For the foregoing reasons, plaintiff's Motion to Compel Discovery and to Impose Sanctions for Failure to Preserve Evidence (**Doc. 30**) is **DENIED**.

**IT IS SO ORDERED.**

**DATED: October 1, 2009.**

s/ Clifford J. Proud  
**CLIFFORD J. PROUD**  
**U. S. MAGISTRATE JUDGE**